

**PATENT****REMARKS**

Claims 1-13 are pending in this application. No amendments have been made to the claims. The claims are simply reproduced for Examiner's convenience. In view of the remarks that follow, Assignee respectfully requests favorable consideration and timely indication of allowance.

In the non-final Office action dated August 2, 2004, the Patent Office rejected the claims as follows:

- a. Claims 1-2, 6 and 9-10 have been rejected under 35 USC §102 (e) as allegedly being anticipated by Petrovic (US/6674993). No patent has issued to Petrovic under this number.

Assignee would like to thank the Examiner for his time in clarifying that the citation is US/6737957B1 (hereinafter "Petrovic").

- b. Claim 8 has been rejected under 35 USC §103(a) as allegedly being unpatentable over Petrovic in view of Wolosewicz (US/5774452) (hereinafter "Wolosewicz '452") further in view of Rhoads (US/2002/0128514A1) (hereinafter "Rhoads").
- c. Claim 10 was rejected under 35 USC 103(a) as being unpatentable over Petrovic in view of Wolosewicz '452.
- d. Claims 1-6 and 9 were rejected under 35 USC 102(b) as allegedly being anticipated by Wolosewicz '452.
- e. Claim 7 was rejected under 35 USC 103(a) as allegedly being unpatentable over Wolosewicz '452 in view of Rhoads (US 2002/0078146 A1).
- f. Claims 11-13 were rejected under 35 USC 103(a) as allegedly being unpatentable over Rhoads (2004/0128514A1)(hereinafter "Rhoads 2004").

These rejections are respectfully traversed, and each rejection will be addressed in turn. Particularly, Assignee submits that the claims are not anticipated, and nor has a *prima facie* case of obviousness been made.

**Rejections Under 35 USC 102(a):**

Claims 1-2, 6 and 9-10 were rejected under 35 USC §102 (e) as allegedly being anticipated by Petrovic US/6737957B1. Assignee respectfully submits that Petrovic does not teach all limitations of these claims as required under 102(b). More particularly, each of these

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claims requires a user interface electrically coupled to the processor and configured to...(ii) activate the processor to selectively initiate extraction of the hidden data.

Petrovic discloses a system for using a watermark embedded in an audio signal to remotely control a device. This device is designed for use during live broadcasts so that the broadcaster can control user input into the device. In this connection, Petrovic discloses a start/stop watermark that is incorporated into the audio signal from the live broadcast. The audio signal then permits operation of the user's device so that the user can, for example, use a toy to participate in a television show. In the case of an educational program, the user may respond to the instructor's questions once the time gate opens. In the case of an advertisement, an advertiser may allow a viewer to answer a poll in connection with a broadcast ad once the time gate opens. Therefore, in Petrovic, the user device is not used initiate extraction of the watermark. At best, the converse is true. It is the broadcast watermark that initiates activation of the user device. Accordingly, Petrovic does not teach at least this limitation.

Because Claims 1 and 9, are allowable, so are Claims 2 and 10, which depend respectively therefrom. Therefore, Assignee respectfully requests that this rejection be withdrawn.

**Rejections Under 35 USC 103(a)**

*Per Claim 7:* Claim 7 was rejected under 35 USC 103(a) as allegedly being unpatentable over Wolosewicz '452 in view of Rhoads (US 2002/0078146 A1).

Assignee respectfully submits that there is no evidence in the Office Action that Rhoads qualifies as prior art. Particularly, Rhoads was filed on August 28, 2001. The cited Rhoads publication was published on or about June 20, 2002, and the present application has an actual filing date of March 13, 2001, with an earlier effective filing date of April 27, 2000. Although the cited Rhoads publication claims priority to applications filed back to 1995, the Office Action does not convey that a publication that could qualify as prior art includes the information relied upon to reject Claim 8. Accordingly, Assignee respectfully requests that this rejection be withdrawn.

Moreover, a *prima facie* case of obviousness has not been made for at least the reason that the references do not teach or suggest all claim limitations. Particularly, Wolosewicz '452 does not disclose hidden data as taught in the present disclosure. In accordance with the present disclosure, hidden data is embedded in an audio signal such that it is inaudible to the user. (See [1033, 1034] of the present disclosure.) On the other hand, Wolosewicz '452 teaches encoded

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data in the form of quick audio bursts. These bursts are audible to the user in the form of a "click-like" sound. Accordingly, Wolosewicz '452 does not teach hidden data as in the present disclosure. Therefore, Assignee respectfully requests that this rejection be withdrawn.

*Per Claim 8:* Claim 8 was rejected under 35 USC §103(a) as allegedly being unpatentable over Petrovic in view of Wolosewicz (US/5774452) (hereinafter "Wolosewicz '452") further in view of Rhoads (US/2002/0128514A1) (hereinafter "Rhoads"). For the same reasons that Rhoads does not qualify as prior art for Claim 7, it does not qualify as prior art for Claim 8.

Moreover, assuming *arguendo*, that Rhoads qualifies as prior art, a *prima facie* case of obviousness has not been made for at least the following reasons: (a) the references do not teach or suggest all claim limitations; and (b) there is no suggestion or motivation to combine the prior art references.

Wolosewicz does not teach at least a base station as set forth in Claim 8. In support of its assertion that Wolosewicz teaches a base station, the office action cites Col. 13:5-10 of Wolosewicz. This cited portion refers to a decoder with a phone jack used in conjunction with a modem. This is not a base station such as those used in wireless communications. In fact, Wolosewicz is a wired connection as indicated by the phone jack and modem. Accordingly, Assignee requests that this rejection be withdrawn.

There is no suggestion or motivation to combine the references. As for the combination of Wolosewicz '452 and Petrovic, Wolosewicz '452 discloses an apparatus and method for encoding and decoding information in audio signals that are commonly *recorded* on records, tapes and compact discs.

On the other hand, Petrovic discloses a system for using a watermark embedded in an audio signal to remotely control a user device. This device is designed for use during *live broadcasts*. The watermark is designed for use with a "time gate" device, and detection of the watermark opens a time interval within which a user is permitted to perform an action. The system incorporates protection against fraudulent activation of the time gate device such that the time gate device is configured to react only to watermarks coming from live broadcasts...*"and not from replays from tapes or other storage devices..."* (emphasis added) (See Petrovic, *Abstract*) In this manner, the user may interact with live broadcasts when the broadcaster determines such

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interaction is appropriate. In Petrovic, the watermark is used to activate the remote control device, and not to send content information to the device regarding the audio signal.

There is no suggestion or motivation to combine Petrovic's system that incorporates a start/stop watermark for user input with respect to live broadcasts with Wolosewicz '452's system that incorporates an embedded signal in taped content for which the user may obtain information. If a user as in Wolosewicz were required to wait until the broadcaster determined it was appropriate for the user to activate the user's device as in Petrovic, it would defeat the purpose of Wolosewicz's invention. It is a purpose of Wolosewicz's invention to "provide apparatuses and methods for keeping track of the identity of audio recordings." Wolosewicz is not designed for the user to interact with the broadcast, but to obtain information regarding recorded media. Waiting for this information and displaying it during a specified time interval would defeat the purpose.

Moreover, the office action combined three references in support of this rejection of Claim 8. The number of references used is indicative of nonobviousness.

*Per Claim 11:* Claims 11-13 were rejected under 35 USC 103(a) as allegedly being unpatentable over another Rhoads publication (2004/0128514A1). For the same reasons that the Rhoads 2002 publication did not qualify as prior art, nor does Rhoads 2004 publication. Rhoads 2004 publication is based on an application filed on September 8, 2003. The publication does not predate the March 13, 2001 filing date of present disclosure, and there is no evidence in the office action that any parent applications incorporate the information relied upon. Moreover, based on a prior provisional application, the present disclosure is entitled to priority as of at least April 27, 2000.

Moreover, a *prima facie* case of obviousness has not been made with respect to Claim 11. In order to create a *prima facie* case of obviousness, the references must teach or suggest all claim limitations. The office action indicates that Rhoads does not teach sharing broadcast revenue among a plurality of entities. In fact, Rhoads does not mention revenue in any form. As such, Rhoads does not teach or suggest at least the following claim elements: (a) wirelessly transmitting the user selection to a revenue determination center; (b) determining a revenue share amount for each of the plurality of entities based upon the broadcast data signals and the user selection; or (c) allocating the determined revenue share amount to each of the plurality of

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entities. Merely because Rhoads discloses that different service providers are involved in the system does not teach or suggest sharing broadcast revenue.

Assignee respectfully requests that this rejection be withdrawn. In the event this rejection is not deemed overcome, Assignee respectfully requests that any subsequent office actions include a reference to support rejection of this claim.

**Rejections Under 35 USC 102(b):**

Claims 1-6 and 9 were rejected under 35 USC 102(b) as allegedly being anticipated by Wolosewicz '452. Assignee respectfully submits that each limitation of these claims has not been disclosed by Wolosewicz '452. Particularly, Wolosewicz '452 does not disclose hidden data as taught in the present disclosure.

In accordance with the present disclosure, hidden data is embedded in an audio signal such that it is inaudible to the user. On the other hand, Wolosewicz '452 teaches encoded data in the form of quick audio bursts. These bursts form "click-like" sounds. Accordingly, Wolosewicz does not teach hidden data as in the present disclosure. Therefore, Assignee respectfully requests that this rejection be withdrawn.

**PATENT****CONCLUSION**

In view of the foregoing remarks, it is respectfully submitted that this application is now in condition for allowance, and accordingly, reconsideration and allowance are respectfully requested. Should any issues remain which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone Assignee's undersigned attorney.

If there are any fees due in connection with the filing of this response, please charge such fees to our Deposit Account No. 17-0026. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for, such an extension is requested and the fee should also be charged to our Deposit Account. A duplicate copy of this page is enclosed.

Respectfully submitted,

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